

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

LISA SCHILLER,

No. 07-10131

Debtor(s).

Memorandum re Homestead Amount

The debtor's Chapter 13 plan is predicated on a \$75,000.00 homestead amount on property she owns as tenant in common with her husband. There are no other family members. The Chapter 13 trustee objects, arguing that the debtor is entitled to only a \$50,000.00 exemption.


California Code of Civil Procedure § 704.730(a)(2) provides for a \$75,000.00 exemption only if there is at least one member of the family who owns no interest or only a community interest in the property. Since there is no such person in this case, the objection must be sustained. See *In re McFall*, 112 B.R. 336, 340 (9<sup>th</sup> Cir. BAP 1990).

The court sees no relevance whatsoever in either of the two cases cited by the debtor.

The debtor has not met her burden of showing that the requirements of § 1325(a)(4) of the Bankruptcy Code have been met, since in Chapter 7 she would be entitled to only a \$50,000.00 homestead exemption. The trustee's objection to her plan will accordingly be sustained.

The debtor may have 10 days to file an amended plan based on a \$50,000.00 homestead exemption. If she fails to do so, this case will be dismissed. The trustee shall submit an appropriate form of order.

Dated: August 3, 2007



Alan Jaroslovsky  
U.S. Bankruptcy Judge